IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955
No. _____

JOSEPH W. DI SILVESTRO, (Veteran)

PETITIONER,

-v.-

UNITED STATES VETERANS ADMINISTRATION, et al.,

RESPONDENTS.

M O T I O N

NOW, comes the petitioner in the above captioned case and moves this Court as an American-born citzen, for the following orders, based upon the annexed verified affidavit; Petition for a Writ of Certiorari, and supporting Brief, for a review on the decisions of the UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT and the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, as follows:

1. That the Writ of Certiorari be granted.
2. To dispense with the printing of the petition and brief and record, and , petitioner be permitted to proceed in Forma Pauperis.
3. That in lieu of the printing, petitioner be permitted to proceed on 40 mimeograph copies of the petition with supporting brief and 40 copies of the record (mimeograph).
4. That petitioner be granted an early hearing.

Respectfully submitted
/s/ JOSEPH W. DI SILVESTRO

PETITIONER & Attorney Pro Se
41-11 12th Street
Long Island City 1, New York

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

STATE OF NEW YORK)
: SS:
COUNTY OF QUEENS)

JOSEPH W. DI SILVESTRO , being duly sworn, deposes and says:

That he is a citzen of these United States and of the State of New York, and he is the petitioner herein and attorney pro se and makes this affidavit in support of his motion in good faith.

That the petitioner cannot proceed in the appeal of the above entitled matter, because on November 7, 1955, the United States Circuit Court of Appeals for the Second Circuit permitted the petitioner to proceed in forma pauperis; and, the same conditions are prevalent to-date, as follows:

Petitioner is destitute and cannot afford to pay counsel or pay fee, costs, costs of printing the petition and brief and record or give security therefor.

That the nature of this action is one for the preservation of the petitioner's civil rights as guaranteed under the Constitution of the United States.

Petitioner believes that the lower Federal Courts' decisions, if allowed to stand, would constitute a debilitation and obliteration of the judicial powers of the Courts of the United States by any act of Congress under any regulation.

The petitioner believes that acts of Congress in delegating judicial and other Constitutional powers to an administrative agency or agencies, merits the intervention of this Court without hesitancy.

That the petitioner is an honorably discharged veteran, and disabled as the result of a war service-connected injury, established by the Veterans Administration as a disability, and, awarded the petitioner monetary compensation, rendered under a FINAL and CONCLUSIVE DECISION of CARL GRAY, Jr., as the Administrator of Veterans' Affairs, under Public Law 2, 73d Congress and final inaccordance with section 5, of the same said Public Law.

That on March 11, 1955, the respondents, an agency of the Executive Department, exercised authority not granted to them within the DUE PROCESS OF LAW either expressly or by implication pursuant to and under the FIFTH AMENDMENT, of the United States Constitution.

That the respondents were delegated the enumerated power vested in the Courts of the United States and to the Juries.

That on March 11, 1955, the respondents exercised authority contrary to the due processes of the FIFTH AMENDMENT, confiscated, adjudged forfeited, and seized compensation and other monies, constituting petitioner's lawful property.

That the petitioner and his wife are seriously ill and destitute. Their only source of income is derived from the HOME RELIEF WELFARE DEPARTMENT of the City of New York, in the monthly sum of $120., of ~~which $40. is for rent, and the balance must go for food and other~~ $80., is for rent and the balance for food and clothing if any ?

That the matter contained in the mimeograph record, is essential to the consideration of the questions presented in the mimeograph Petition for the Writ of Certiorari.

S

FOR THE REASON/STATED, it is respectfully prayed that the Court grant the petitioner's application for the Writ of Certiorari, and to proceed in forma pauperis on the mimeograph copies of the motion, affidavit, petition and supporting brief and the record, submitted.

That your petitioner has read the foregoing, and swears that the foregoing affidavit is true to the best of his belief and knowledge.

That the petitioner has served upon the SOLICITOR GENERAL, Washington, D. C., with mimeograph copies of the motion, affidavit, petition, and record, through the United States Post Office under registered mail.

That the petitioner filed with the Clerk of this Court a TRANSCRIPT of RECORD of the proceedings of the lower Federal Courts.

Joseph W. Di Silvestro

SWORN TO BEFORE ME THIS
2th
th day of February, 1956.

(SIGNED AND SEALED)
MICHAEL J. OPPELT, Notary Public,
State of New York, No. 4-2967200
Expires March 30, 1957

JOSEPH W. DI SILVESTRO
PETITIONER & AFFIANT
41-11 12th Street
Long Island City 1, New York

MICHAEL J. OPPELT
NOTARY PUBLIC, State of New York
No. 4-2967200
Certified in Queens County
Cert. Filed with County Clerk & Register
Term Expires March 30, 1957

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

JOSEPH W. DI SILVESTRO, VETERAN)

PETITIONER,

-v.-

UNITED STATES VETERANS ADMINISTRATION,
et al.,

RESPONDENTS.

P E T I T I O N

ON PETITION FOR REVIEW ON WRIT OF CERTIORARI FROM DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT; WITH SUPPORTING BRIEF.

JOSEPH W. DI SILVESTRO
Petitioner & Attorney Pro Se
41-11 12th Street
Long Island City 1, New York

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1955

JOSEPH W. DI SILVESTRO
PETITIONER

V.

UNITED STATES VETERANS ADMINISTRATION
ET AL.,
RESPONDENTS.

- X

P E T I T I O N

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES:

SUMMARY OF MATTER INVOLVED

The petitioner respectfully shows this Court the following:

This is a petition to review a final decision of the United States Circuit Court of Appeals for the Second Circuit, that decided on January 3, 1956; PER CURIAM:

> "This is an appeal from a judgment dismissing the complaint in an action that sought judicial review of a decision of Veterans' Administration forfeiting under provisions of 38 U.S.C.A. section 715, a compensation award previously made to the plaintiff. By 38 U.S.C.A. section 705 judicial review of such a decision is explicitly prohibited. The judgment is affirmed on Galston's opinion, 132 F. Supp. 692." (R. 1)

Petitioner appeals from the decisions of the lower Federal Courts. (R. 2-4)

JURISDICTION

The rulings of the lower Federal Courts are such as to bring this case under the jurisdictional power of this Court's enumerated powers of review and APPELLATE JURISDICTION both in Fact and Law under Civil and Criminal review and expressed in the ARTICLE III, UNITED STATES CONSTITUTION and the Court's inherent power to declare, invalidate, any act of Congress Unconstitutional that is repugnant and violates the Constitution.

QUESTION PRESENTED

1. Whether the Congress of the United States has the Constitutional power to obliterate, delegate or prohibit the judicial powers vested in the Courts of the United States ?

2. Whether the Congress of the United States has the Constitutional power to delegate to an administrative agency authority vested in duly constituted JURIES both civil and criminal ?

3. Whether the Congress of the United States has the Constitutional power, to abridge the petitioner's right to Trial by Jury, to petition the Government for a redress of grievance, to deprive the petitioner to all privileges and immunities and EQUAL PROTECTION of the LA W ?

4. Whether the Constitution of the United States contains either in express words or implication, that the Administrator of Veterans' Affairs to have the authority of, Judge, Jury and Prosecutor, in law, equity and with APPELLATE JURISDICTION both as to LAW and FACT ?

5. Whether the Constitution of the United States contains either in express words or implication that Congress of the United States to have the power to declare punishment or define misdemeanors, felonies, other than, treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas and offenses against the law of Nations ?

REASONS FOR GRANTING THE WRIT

1. That the decisions of the lower Federal Courts are such as to bring this case within the jurisdiction of this Court to determine the constitutionality of sections of a Compensation enactment of Congresss that allows one group of veterans (World War I) the intervention of courts of competent jurisdiction to invalidate any sections of the Congressional Act, and DENIES another group of war veterans (World War II) the intervention of courts of competent jurisdiction to make the same determination.

2. The other reasons are in the 'QUESTIONS PRESENTED' on page number -6- hereof.

CONCLUSION

For the foregoing reasons it is respectfully prayed that this Court grant petitioner's motion and orders as applied for on page and 3 hereof, in support of the motion.

Respectfully submitted

JOSEPH W. DI SILVESTRO
Petitioner & Attorney Pro Se
41-11 12th Street
Long Island City 1, New York

INDEX OF BRIEF

	Page
OPINION	9
JURISDICTION	9
STATEMENT OF CASE	10
ERRORS	11
SUMMARY OF ARGUMENT	12
CONCLUSION	13

CITATIONS:

132 F. Supp. 692	9
219 U.S. 281	12
MARBURY v. MADISON, 1 Cranch, 37	12

STATUTES:

ART. III CONST., U.S.	12, 14
ART. IV CONST., U.S.	14
5th, 6th & 7th Amendments, U.S. CONST.	12, 13, 14
1st amendment, U.S. CONST.	14
STATUTE OF LIMITATIONS	10, 13
Sec. 705, 715 title 38 U.S.C.A.	9 to 15
Sec. 5 Pub L. 2, 73d Congress	10, 13
Sec. 15 Pub. L. 2, 73d Congress	10
PUBLIC LAW 2, 73d Congress	13
WORLD WAR VETERANS' ACT, 1924	11, 13
Fed Rules Civ Practice , Rule 7	13

(S A M E T I T L E)

TO THE HONORABLE THE CHIEF JUSTE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINIONS

For the convenience of the Court referred to below is the reported opinion of Judge Gal ston, United States District Court, Eastern District of New York, 132 F. Supp. 692, as follows:

> "Action by veteran for restoration of certain alleged rights in connection with his pension and compensation benefits.
>
> Veteran and Veterans Administration moved for dismissal. The District Court, Galston, J., held that under statute providing that all decisions rendered by the Administrator of Veterans' Affairs under statutes relating to compensation, veterans' pension and veterans' relief, shall be final and conclusive, court was unable to grant any relief sought, and complaint would be dismissed without prejudice to any administrative right. Veterans' Administration's motion to dismiss granted."

The United States Circuit Court of Appeals for the Second Cuit, affirmed on January 3, 1956 the above judgment on the basis of the statutes involved as follows:

> "PER CURIAM: This is an appeal from a judgment dismissing the complaint in an action which sought judicial review of a decision of the Veterans' Administration forfeiting under provisions of 38 U.S.C.A. section 715, a compensation award previously made to the plaintiff. By U.S.C.A. section 705 judicial review of such a decision is explicitly prohibited. The judgment is affirmed on Judge Galston's opinion 132 F. Supp. 692." (R. 1)

JURISDICTION

The rulings of the above named Federal lower Courts are such as to bring this action within the jurisdictional powers of this Court under ARTICLE III, of the United States Constitution, to declare and invalidate sections of Congressional enactments repugnant to and in violation of the United States Constitution.

STATEMENT OF THE CASE

38 U.S.C.A., section 715, provides:

"Any person who shall knowingly make or cause to be made, or conspire, combine, aid or assist in, agree to arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim or benefits under this title, shall forfeit all rights, claims and benefits under this title, and in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one year, or both."

Section 705 U.S.C.A., provides, in the relevant aprt as follows:

"All decisions rendered by the Administrator of Veterans' Affairs under the provisions of * * * 715 * * * shall be final and conclusive on a ll questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decisions." (R. 12, 3rd paragraph).

The Lower Federal Courts WERE POWERLESS TO ENTERTAIN JURISDICTION, notwithstanding, that the STATUTE OF LIMITATIONS WAS INVOKED against defendants' demurrer that obtained the dismissal of the complaint (R. 12, 5d paragraph; complaint alleged WAR SERVICE-CONNECTED DISABILITY and compensatory monetary award, final and conclusive under section 5, Public No 2, 73d Congress (R. 14.) Complaint R. 6-11).

The petitioner invoked the STATUTE OF LIMITATIONS at a hearing before the Honorable Judge Galston in ~~June 16~~ May, 1955; and the Honorable Judge Galston took cognizance of the statute, since he was the Judge under different circumstances and issues that in January, 1949, the Veterans Administration attacked at that time the validity of the compensation and service connected disability. The Honorable Judge found and established the validity of the service-connected disability, for in his opinion referring to the subject matter of section 715, title 38 U.S.C.A., that court says, "THe subject matter of this litigation has been before the courts on several occasions." (R. 2, last paragraph).

ERRORS

1. Congress of the United States has no vested authority to delegate the judicial powers vested in the Courts of the United States to an administrative agency of the Executive Department.

2. Congress of the United States has no vested authority to delegate to an administrativeagency of the Executive Department the functions of our JURIES which is strictly reserved to the PEOPLE of these United States.

3. Congress of the United States has no vested authority to delegate to an administrative agency of the Executive Department the authority or discretion to abuse the privileges and immunities guaranteed to the petitioner as an honorably discharged veteran who served his Country under God, faithfully in time of war.

4. Congress of the United States has no vested authority to make, or define, misdemeanors or felonies or set fines or punish citizens, other than, treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on th high seas and offenses against the law of Nations.

5. Congress of the United States failed to grantthe EQUAL PO-TECTION of the law to World War II, veterans in the enactment of Section 5, of the Act of March 20, 1933, 48 Stat. 9, 38 U.S.C.A. 705, under the provisions of 38 U.S.C.A. 715, as granted to World War I, veterans, under section 605, WORLD WAR VETERANS ACT of 1924, as amended, that grantsthe INTERVENTION OF COURTS OF COMPETENT JURISDICTION to INVALIDATE sections or portions of that Act to one group of veterans only, and does not protect other war veterans.

SUMMARY OF ARGUMENT

I

The petitioner contends that the fundamental principle in dispute is that:*- "The Government created by Federal Constitution is one of enumerated powers, and cannot by any of its agencies exercise an authority not granted by that instrument either expressly or by necessary implication, 219 U.S. 281, 282."(Cited only for a Constitutional definition)

Congress in violation of the Constitution has delegated among other things to an administrative agency of the Executive Department, the powers enumerated to the Supreme Court pursuant to ARTICLE III, of the United States Constitution, with special referral to that portion, Section 2, second paragraph, to wit: "* * * the supreme Court shall have Jurisdiction, both in LAW AND FACT ." A referral to sections 705 and 715, title 38 U.S.C.A., to wit: "NO * * * COURT OF THE UNITED STATES SHALL HAVE JURISDICTION TO REVIEW BY MANDAMUS OR OTHERWISE SUCH DECISION." ---- Therefore, is this Court without JURISDICTION in the case at bar ? Or, as the said section says:*- (further) " NO OTHER OFFICIAL *** OF THE UNITED STATES SHALL HAVE JURISDICTION TO REVIEW BY MANDAMUS OR OTHERWISE SUCH DECISION." Therefore, can the petitioner an American Citizen, petition the Government for a redress of a grievance ? Obviously, the Administrator of Veterans' Affairs is held higher than CONGRESS? THE PRESIDENT and THE COURTS. How can petitioner seek redress of a grievance IF THE COU RTS ARE UNABLE TO JUDICIALLY REVIEW ? To this Chief Justice Marshall of the Supreme Court said, "THAT ANY ACT REPUGNANT TO THE CONSTITUTION IS NULL AND VOID!"

Seventh Amendment to the United States Constitution guarantees and preserves the RIGHT TO JURY TRIAL in controversy exceeding

twenty dollars, as alleged in (R. 6-11) the complaint. Jury Trial demanded (R. 5) and denied (R. 4, last paragraph), for monetary Credits under an " AN ACT TO MAINTAIN THE CREDIT OF THE UNITED STATES GOVERNMENT, section 5, Public No. 2, 73d Congress, March 20, 1933, (R. 14) the award of compensation that is FINAL AND CONCLUSIVE since October 10, 1946. This is a DEBT owing the petitioner and alleged in his complaint AND IS UNCONTROVERTED BY THE VETERANS ADMINSTRATION. FEDERAL RULES OF CIVIL PROCEDURE, RULE 7 (a) says, "There shall be a complaint and an answer;" (the certified record is barren of an answer)

II

Under section 605, WORLD WAR VETERANS ACT, 1924? PROVIDES, that veterans of World War I, with the protection and right of intervention of "ANY COURT OF COMPETENT JURISDICTION", for veterans' rights, claims or benefits, as follows:

> "THAT IF any clause, section, paragraph or part of this Act for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, or invalidate the remainder of this Act but shall be confined in its operation to the clause, sentance, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered."

Can section 605 be made available to disabled veterans of World War I, AND NOT AVAILABLE TO VETERANS OF WORLD WAR II ?

Your petitioner a disabled war veteran of World War II, (R. 14) asserts this DISCRIMINATION in violation of the EQUAL PROTECTION OF THE LAW in the cycle of the first magnitude and such discrimination is repugnant to the Constitution of the United States.

III

DUE PROCESS UNDER THE STATUTE OF LIMITATIONS, RECOGNIZES NO CRIME

IN EXISTANCE AFTER 3 YEARS HAVE ELAPSE, notwithstanding that 6 years elapsed under the subject matter that the Honorable Judge Galston is familiar with, the subject matter, as mentioned on (page 10 of this brief, supra, and yet the lower Courts are POWERLESS to protect petitioner's rights to the due processes of the law.

IV

It is respectfully pointed out, that the SOLE AND ONLY ISSUE before the Court, is the DECISION OF THE CIRCUIT COURT OF APPEALS, (R. 1) affirming the District Court's opinion (R. 3, last paragraph) that reads in the relevant part, as follows: Section 705 title 38 U.S.C.A.

> "All decisions rendered by the Administrator of Veterans' Affairs under the provisions of * * * 715 * * * shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise such decision."

V

IT IS RESPECTFULLY POINTED OUT, THAT THE CHARGES UNDER THE PROVISIONS OF SECTION 715, page 10, supra, ARE INDICTABLE OFFENSES. Therefore the petitioner without fear or favor contends THAT HIS RIGHTS, CLAIMS and BENEFITS CANNOT BE FORFEITED UNDER SUCH CHARGES BY ANY ADMINISTRATOR UNDER ANY FINAL DECISION, WITHOUT THE PRESENTMENT OR INDICTMENT OF A GRAND JURY AND UNDER THE DUE PROCESSES OF JURY TRIAL UNDER ARTICLE III, AND THE 5th AMENDMENT OF THE UNITED STATES CONSTITUTION. Nor shall your petitioner be DENIED THE RIGHT TO REDRESS under the FIRST AMENDMENT and AND THE PRIVILEGES CONFERRED UPON AN ACCUSED UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION Nor shall your petitioner be DENIED THE APPELLATE JURISDICTION OF THIS COURT IN LAW AND FACT AS HANDED DOWN BY CHIEF JUSTICE JOHN MARSHALL WHO REASONED BY HIS GOD GIVEN SENSE, HELPED US TO ESTABLISH THE CONSTITUTION as a

living and perfect instrument to effect the greatest Government which has ever existed.

The delegation of these enumerated powers cannot vest in the authority of or in the exercise of any governmental agency of the Executive Department; and in support hereof, petitioner stands firmly upon his beliefs expressed on page -11-, supra, under items 1 to 5.

V

In conclusion, petitioner contends, that the fundamental principle holds, that, "THAT GOVERNMENT CREATED BY FEDERAL CONSTITUTION IS ONE OF ENUMERATED POWERS, AND CANNOT BY ANY OF ITS AGENCIES EXERCISE AN AUTHORITY NOT GRANTED BY THAT INSTRUMENT EITHER EXPRESSLY OR BY IMPLICATION.", therefore,

VI

IT IS RESPECTFULLY SUBMITTED, that based upon the foregoing reasons, the Writ of Certiorari be granted inasmuch as enumerated powers have been delegated without vested authority and that this Court declare that portion of the Act of Congress with respect to section 705 under the provisions of section 715, Title 38 U.S.C.A., to be UNCONSTITUTIONAL and INVALID; and it is,

Further, respectfully submitted that this Court order the intervention of the lower Federal Courts to grant the relief sought for by your petitioner or in the alternative to grant the relief sought for in the Motion before the Court for a review on Writ of Certiorari.

Joseph W. Di Silvestro

JOSEPH W. DI SILVESTRO
Petitioner & Attorney Pro Se
41-11 12th Street
Long Island City 1, New York.

66/34

FILED
MAR 2 1956
HAROLD B. WILLEY, Clerk

No. 550 Misc.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

JOSEPH W. DI SILVESTRO, PETITIONER

v.

UNITED STATES VETERANS ADMINISTRATION, ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

SIMON E. SOBELOFF,
Solicitor General,

Department of Justice,
Washington 25, D. C.

66/34

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 550 Misc.

JOSEPH W. DI SILVESTRO, PETITIONER

v.

UNITED STATES VETERANS ADMINISTRATION, ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

Petitioner sought review in the district court of a decision of the Administrator of Veterans Affairs terminating, pursuant to 38 U. S. C. 715,[1] disability compensation benefits previously awarded him. The district court dismissed the complaint for want of jurisdiction. Di Silvestro v. United States, 132 F. Supp. 692 (E. D. N. Y.).[2] The

---

1/ § 715. "Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in anywise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for benefits under sections 701, 702, 703, 704, 705, 706, 707-710, 712-715, 717, 718, 720, and 721 of this title, shall forfeit all rights, claims, and benefits under such sections, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both."

2/ In a different context appellant's compensation award has been the source of prior litigation. See Di Silvestro v. United States Veterans Administration, 81 F. Supp. 844, affirmed, 173 F. 2d 933 (C. A. 2); Di Silvestro v. United States Veterans Administration, 9 F. R. D. 433; Di Silvestro v. United States Veterans Administration, 10 F. R. D. 20, affirmed, 181 F. 2d 502 (C. A. 2), certiorari denied, 339 U. S. 989; Di Silvestro v. Gray, 194 F. 2d 355 (C. A. D. C.), certiorari denied, 343 U. S. 930.

Court of Appeals for the Second Circuit, per curiam, affirmed on the opinion of the district court (Pet. 1). Both courts below grounded their decision on 38 U. S. C. 705[3] which, together with 38 U. S. C. 11a-2,[4] in the area of veterans' benefits and gratuities, impart absolute finality to administrative decisions of the Administrator of Veterans Affairs and expressly preclude judicial review of such decisions.

The decision, which is limited to the jurisdictional question, is clearly correct,[5] and no substantial constitutional question is involved, since it is settled that "[t]he Congressional power to ordain and establish inferior courts includes the power ' * * * of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'" Lockerty v. Phillips, 319 U. S. 182, 187.[6] Further review by this Court is therefore unwarranted.

SIMON E. SOBELOFF,
Solicitor General

MARCH 1956.

3/ § 705. "All decisions rendered by the Administrator of Veterans' Affairs under the provisions of sections * * * of this title or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

4/ § 11a-2. "Notwithstanding any other provisions of law, except as provided in sections 445, and 817 of this title, the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or payments under any Act administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decisions."

5/ See June A. Cyrus v. United States, 226 F. 2d 416 (C. A. 1); Brasier v. United States, 223 F. 2d 762 (C. A. 8), certiorari denied, 350 U. S. 913; United States v. Houston, 216 F. 2d 440 (C. A. 6); Hahn v. Gray, 203 F. 2d 625 (C. A. D. C.); Slocumb v. Gray, 179 F. 2d 31 (C. A. D. C.); Snauffer v. Stimson, 155 F. 2d 861 (C. A. D. C.); Van Horne v. Hines, 122 F. 2d 207 (C. A. D. C.), certiorari denied, 314 U. S. 689; Barnett v. Hines, 105 F. 2d 96 (C. A. D. C.), certiorari denied, 308 U. S. 573; Longernecker v. Higley, No. 12,568 (C. A. D. C.), decided December 22, 1955.

6/ See also United States v. Babcock, 250 U. S. 328, 331; United States v. Teller, 107 U. S. 64, 68; Lynch v. United States, 292 U. S. 571, 587; Frisbie v. United States, 157 U. S. 160, 166.

No. 550 Misc.

SUPREME COURT, U. S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

JOSEPH W. DI SILVESTRO, PETITIONER

v.

UNITED STATES VETERANS ADMINISTRATION, ET AL.,

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR PETITIONER IN REPLY TO RESPONDENTS' OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

JOSEPH W. DI SILVESTRO
PETITIONER & ATTORNEY PRO SE
41-11 12th Street
Long Island City 1, New York

(SAME TITLE)

No. 550 Misc.

REPLY TC RESPONDENTS MEMORANDUM IN CPPCSITION
FOR A WRIT OF CERTIORARI

Now comes the petitioner and replies to the Respondents' Memorandum, and the petitioner shows as follows:

1. Petitioner sought no JUDICIAL REVIEW in the lower Courts of decisions in the area of veterans' benefits and gratuities, inasmuch as the Petitioner MET ALL REQUIREMENTS to COMPENSATION pursuant to Public Law 2, 73d Congress and payments thereunder are mandatory for the VA to administer under 38 U.S.C.A. 11a-2 and under 38 U.S.C.A. 701 and 705 are final. (see R. p7, allegation number 3) also see final administrative decision under Public Law No. 2, 73d Congress (R. 14)

Respondents seek by memorandum to circumvent the law and facts alleged in the amended complaint and the Right of Review on the law and facts to which no JUD ICIAL REVIEW was granted the Petitioner in any court of the United States .

Petitioner ~~pend~~ has a service connected disability and has been established upon irrefutable evidence of record since December 29. 1944, and the respondents seek by memorandum to place the compensation in the category of GRATUITIES or PENSIONS which are in substance CHARITY and not Compensation. Congress under Public Law No 2, 73d Congress is NOT A BENEFACTOR, therefore the compensation payable to the petitioner is a/DEBT OF THE GOVERNMENT under the express language of the act that is known as "AN ACT TC MAINTAIN THE CREDIT OF THE UNITED STATES GCVERNMENT".

Section 705-715 U.S.C.A. title 38 denies JURY TRIAL BCTH CIVIL AND CRIMINAL and violates the United States Constitution and is repugnant under AMERICAN JURISPRUDENCE. JUDICIAL REVIEW UNDER THE CONSTITUTION IN THE CASE AT BAR IS A MATTER OF INALIENABLE RIGHT, notwithstanding that a Writ of Certiorari is discretionary.

A review by this Court is warranted and the PETITION FOR A WRIT OF CERTIORARI BE GRANTED.

JCSEPH W. DI SILVESTRO
PETITIONER & ATTCRNEY PRO SE
41-11 12th Street
Long Island City 1, N. Y.

March 5, 1956